

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08/10/2002

CORAM

THE HONOURABLE MR.JUSTICE N.DHINAKAR
AND
THE HONOURABLE MR.JUSTICE A.PACKIARAJ

H.C.P.No.1937 of 2002

Philomena .. Petitioner.

-Vs-

1.The Commissioner of Police
Greater Chennai, Chennai 600 008.

2.State, represented by the
Secretary to Government,
Prohibition and Excise Department,
Secretariat, Chennai 600 009. .. Respondents.

For Petitioner: Mr.N.Ananda Kumar

For Respondents: Mr.A.Navaneetha Krishnan
Addl.PP.

PRAYER: Petition filed under Article 226 of the Constitution of India for
issue of Writ of Habeas Corpus for the relief as stated therein.

:O R D E R

(Order of the Court was delivered by A.Packiaraj,J.)

The petitioner is the mother of the detenu and she challenges the
order of detention dated 11.05.2002 passed by the first respondent under the
provisions of Tamil Nadu Act 14 of 1982, detaining him, after he was
identified as a "Bootlegger", since he had come to the adverse notice of the
authorities and on 06.05.2002, he acted in a manner prejudicial to the
maintenance of public health and that if he is let to remain at large, he will
indulge in such further activities and that therefore, there is a compelling
necessity to detain him.

2. We do not propose to extract the entire details of the grounds of
detention, since both the sides have agreed that the petition is to be
considered only on the following short ground.

3. The learned counsel for the petitioner would submit that in the representation dated 02.08.2002 sent to the Government, a mention has been made only about as to how a false case has been foisted against the detenu and that he has not committed any offence. That at no point of time, in the representation, a request was made to the Government to furnish with any documents. In such circumstances, the detenu was surprised to receive a communication rejecting the representation, mentioning that the documents which he requires had already been furnished to him. Therefore, the learned counsel submits that the representation, in effect, has not been considered but on merits has been mechanically dismissed and the Government has passed an order, which runs contrary to the representation sent by the petitioner.

4. In support of the contention advanced above, the learned counsel would rely on a decision of this Honourable Court in Parvathi Vs. State rep. by the District Collector cum District Magistrate, Perambalur District, Perambalur and Others. (2000(1) MWN (Cr.)282), which also pertains to a case wherein the representation has been sent by the detenu mentioning about the false case and at no point of time, he has requested the Government to furnish with the documents, but the Government by way of reply, while rejecting the representation has stated that the documents asked for by the detenu has already been supplied. While deciding the said issue His Lordship Justice V.Sirpurkar has held as follows:

".. the answer given cannot be linked with the point raised in the representation that the relatives of the detenu were not intimated. At the most, the State Government could have given the date of such intimation of notice or it could have denied the allegation by suggesting that the intimation was in fact given. To reply such a point raised by saying that the necessary documents have already been supplied to the detenu would be really a travesty. We cannot brook the same. It is, therefore, clear that the representation has been dealt with in a cavalier and a casual fashion without advertting to the point raised."

We are of the view that the said decision applies in all fours to the facts and circumstances of the case on hand and consequently, we hold that the representation has not been duly considered at all. In the above circumstances, the order of detention gets vitiated and accordingly, deserves to be set aside.

In the result, the HCP is allowed. The detenu is directed to be set at liberty forthwith unless he is required in connection with any other cases.

Index:Yes
Website:Yes
csh

To

1.The Secretary to Government
State of Tamil Nadu,
Prohibition & Excise Department,
Fort St. George,

Chennai- 600 009.

2.The Commissioner of Police,
Greater Chennai, Chennai -8.

3.The Superintendent
Central Prison,
Chennai.

4.The Joint Secretary to Government
State of Tamil Nadu,
Public (Law & Order)
Fort St. George,
Chennai - 600 009.

5.The Public Prosecutor
Chennai.

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